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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 437

G. A. ROSCHEK, *Petitioner,*

vs.

STELLA E. WILLIAMSON, *Respondent.*

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

G. A. ROSCHEK,
By ELI F. SEEBIRT and
ORLO R. DEAHL,
Counsel for said Petitioner.

SEEBIRT, OARE & DEAHL,
Of Counsel for
G. A. Roschek, the Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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Argument:

I. The decision of the Circuit Court of Appeals that liability does not attach, as a matter of law, to the record transferee of National bank stock where the transferee was without original knowledge of the transfer but subsequently accepts and appropriates dividend checks therefrom, made payable to the transferee and drawn by and upon the National Bank, with knowledge or a patent opportunity for knowledge that the dividends resulted from the stock in question probably conflicts with a decision of this court 11

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No.....

G. A. ROSCHEK,

Petitioner,

against

STELLA E. WILLIAMSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Harlan F. Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

This action was brought November 14, 1939, in the District Court of the United States for the Northern District of Indiana, South Bend Division, by the Receiver of the New Albany National Bank of New Albany, Indiana, against the respondent for an assessment levied by the Comptroller of the Currency of the United States on four-

teen and one-fourth (14¼) shares of the stock of said bank standing in the name of the respondent upon which assessment the sum of $309.64 previously had been paid. Before trial the Receiver sold and transferred the chose in action to the petitioner herein and he was substituted as plaintiff. Trial was had before a jury which returned a verdict for respondent.

The New Albany National Bank was organized as a National Banking Association pursuant to the Acts of Congress. On the 23rd day of March, 1934, the Comptroller of Currency made a finding that said bank was insolvent and appointed a receiver (R. p. 12). The Comptroller duly levied an assessment on the stock for the par value of every share, payable on or before July 1, 1934 (R. p. 13).

On and prior to February 10, 1930, one Arthur B. Williamson was the owner of 14¼ shares of the stock of said bank of the par value of $100 per share. On January 14, 1930, Arthur B. Williamson disappeared and was not heard of until February 26, 1930, when he was found dead in the St. Joseph River. Arthur B. Williamson was the husband of the respondent (R. p. 13).

The stockholders' register of said bank shows that on February 10, 1930, the stock certificate standing in the name of Arthur B. Williamson was cancelled and a new certificate for the same number of shares was issued in the name of respondent (R. p. 13). The records of the bank show that said transfer was made pursuant to power of attorney signed in blank by A. B. Williamson in the presence of George Borgerding, A. B. Williamson being the same person as Arthur B. Williamson. The new stock certificate issued in the name of respondent was receipted for on February 10th, by "Stella E. Williamson by George Borgerding" (R. p. 14). George Borgerding was the father of respondent, Stella E. Williamson (R. p. 15).

On June 30, 1930, the bank declared a dividend of $5.00 per share on each of the shares outstanding as dividend No. 121. Pursuant to said declaration, the bank issued its check payable to Stella E. Williamson in the sum of $71.25, which check was on July 1, 1930, endorsed by her and presented at the Citizens National Bank of South Bend, Indiana (R. p. 15).

On December 31, 1930, said bank again declared a dividend of $5.00 per share on its capital stock, known as dividend No. 122, and pursuant to said declaration the bank issued its check payable to Stella E. Williamson in the sum of $71.25. This check was on January 3, 1931, duly endorsed by respondent and presented by her at the Citizens National Bank of South Bend (R. p. 15).

The first check issued by the New Albany National Bank had in the left-hand margin a notation as follows: "Dividend No. 121". The second check also had a marginal notation as follows: "Dividend No. 122" (R. p. 63).

In the summer of 1939 the Receiver of the New Albany National Bank made a demand upon respondent for the amount of the assessment on the 14¼ shares and on June 26, 1939, mailed a letter to respondent which was duly received (R. p. 16). The letter set forth that the bank records showed that respondent exercised ownership of the stock and had twice received dividends, in the amount of $71.25 each, and made a demand for the payment of the assessment (R. p. 64).

The respondent individually made no payment on the stock assessment (R. p. 16) but respondent, as administratrix of the estate of Arthur B. Williamson, paid the sum of $309.64 from the estate of Arthur B. Williamson, deceased (R. p. 17). The Receiver gave a notice against the shareholders and addressed a notice to Arthur B. Williamson and upon filing a claim in the estate of Arthur B. Wil-

liamson the administratrix allowed such claim in the court in which the estate was pending. The estate was closed as insolvent and there was paid to the Receiver the sum of $309.64 which was a pro rata share of the assets of said estate. The estate of Arthur B. Williamson was closed. The receiver applied the said $309.64 to the assessment (R. p. 17).

In the probate proceedings on the estate of Arthur B. Williamson no sale of the stock was authorized by the court and the stock was not distributed (R. p. 17). The inventory filed in the court of probate jurisdiction did not list said stock (R. p. 43). The stock had value at the time of Mr. Williamson's death and in the final report the dividends received upon the stock by respondent were not listed (R. p. 44).

Respondent, a witness in her own behalf, denied that she ever had the stock certificate which was issued in her name in her possession (R. p. 25); that she was ever informed by any one that the books of the bank disclosed that she was a stockholder; that she ever received any notice from the secretary of the bank of a stockholders' meeting; that she ever authorized her father to give a receipt for any stock at the bank (R. p. 26). She also said that as administratrix she didn't transfer any stock of the said bank and signed no petition requesting an order for the transfer of the stock and that the same was not transferred in the estate to any of the heirs or distributees (R. p. 27).

Respondent also said that she did not recall receiving a check for the sum of $71.25 from the New Albany National Bank sometime in June or July of 1930. And then when asked whether she recalled receiving a check around December 31, 1930 answered, "I hardly recall it". She further stated that the demands made on the stock liability prior to 1939 were made against the estate of Arthur B. Williamson (R. p. 28).

Respondent also said that she knew that her husband had a certificate of stock representing 14¼ shares in the New Albany National Bank prior to his death; that she did not recall that she made any inquiry about the stock after his death. When asked whether she made any inquiry as to the certificate of stock after her husband's demise, she answered, "No; I knew I had it; I knew he had it", but said she did not recall that she made any attempt to locate it. She stated further that she did not recall endorsing the checks for dividends; that she was too grieved at the time to worry over such things (R. p. 29).

Respondent stated that she did not have any other stock at New Albany on which she could get a dividend. She further asserted that she did not have any stock whatsoever and she supposed that if she received a dividend at all it would be a dividend on the New Albany National Bank.

Respondent stipulated that the dividend checks were duly endorsed by her and presented to the Citizens National Bank (R. p. 16).

Respondent signed and caused to be filed the final report in the administration of her husband's estate without giving any consideration to whether she received dividends on the stock (R. p. 34). She filed a claim against her husband's estate in the amount of $1,204.21 (R. p. 37).

She said that she probably saw her name on the dividend checks but that she does not recall (R. p. 38).

Arthur B. Williamson had a loan with St. Joseph Bank and Trust Company in 1930 and used the stock certificate then in his name as collateral security. After the death of Arthur B. Williamson the note was paid (R. p. 39). The respondent's attorney herein testified that at the request of Mr. Borgerding, the father of the respondent, and with a draft sent by the father of the respondent, he paid the note

at the St. Joseph Bank and Trust Company and sent the note to Mr. Borgerding (R. p. 43). The witness received the stock.

The witness, as attorney for the estate of Mr. Williamson, prepared the final report. He also prepared the inventory and appraisement for the defendant to sign. The inventory and appraisement was filed in 1934 after the bank ceased to do business and the stock was not included in the inventory and appraisement (R. p. 43). The attorney presumed that the stock had value at the time of Mr. Williamson's death but assumed that since it had no value at the time of the filing of the inventory and appraisement, it was not necessary to list it. He knew, however, that the bank was operating at the time of Mr. Williamson's death. He further stated that he did not list the dividends in the final report because he didn't know that any dividends had been received (R. p. 45). He stated that if he had known that she received dividends on the stock he would not have listed them as an asset under the circumstances as he would have offset the same against debts of the decedent paid by the widow from her own funds (R. p. 46).

II.

Jurisdictional Statement.

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because:

1. The date of the judgment and opinion of the Circuit Court of Appeals for the Seventh Circuit to be reviewed is May 5, 1944 (R. p. 82). Petition for rehearing was duly filed and rehearing was denied June 6, 1944 (R. p. 87).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat.

938, Sect. 1; 28 U. S. C. A. 347) which admits of a writ of certiorari to review a final judgment of the Circuit Court of Appeals for the Seventh Circuit.

3. It is manifest from the record and the foregoing summary statement that this cause is based upon an asserted liability arising under the laws of the United States governing national banking associations.

The question presented, as hereinafter set forth, is substantial in that it is believed the decision herein of the Circuit Court of Appeals for the Seventh Circuit is contrary to the governing rule of law established by this Court in the case of *Keyser* v. *Hitz*, 133 U. S. 138, and that, if the decision herein be permitted to stand without clarifying review, confusion and uncertainty will result in the application of controlling concepts in respect of superadded liability of stockholders in national banking associations.

4. The cases believed to sustain the jurisdiction of this Court are as follows:

Inland Waterways Corp., et al., v. *Frederick J. Young, Rec.* (1940), 309 U. S. 517.

J. Buckner Fisher, Rec. v. *Louise Whiton, Exrx.* (1942), 317 U. S. 217.

Maricopa County, Arizona v. *Valley National Bank of Phoenix* (1943), 318 U. S. 357.

III.

Question Presented.

The sole question presented is: Whether or not where stock of a national banking association stands in the name of a given person, even though the stock shall have been transferred into the name of such person without prior authority or knowledge, such person is answerable for superadded liability thereon as a matter of law if, after the transfer, dividend checks drawn by and upon such

association and made payable to such person are endorsed and cashed by such person with knowledge or a patent opportunity for knowledge that such dividends resulted from the stock in question.

IV.

Reasons Relied Upon for Allowance of the Writ.

1. The decision herein of the Circuit Court of Appeals for the Seventh Circuit has determined a federal question in a way probably in conflict with the applicable decision of this Court in the case of *Keyser* v. *Hitz*, 133 U. S. 138.

V.

Your petitioner presents to and contemporaneously files with this Court adequate copies of a duly certified transcript of this case, as the same appears in the United States Circuit Court of Appeals for the Seventh Circuit.

WHEREFORE, your petitioner prays that a writ of certiorari issue out of and under the seal of this Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings in said Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment herein of the Circuit Court of Appeals be reversed; and for such further relief as to this Court may seem proper.

G. A. ROSCHEK,

Petitioner.

By ELI F. SEEBIRT,
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